IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

SA.No. 66 of 1994()

AS.8/1986 of PRINCIPAL SUB COURT,ATTINGAL
OS.111/1984 of MUNSIFF COURT,VARKALA
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APPELLANTS: APPELLANTS/ PLAINTIFFS
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1. **PARAMESWARAN PILLAI GOPALA PILLAI, VELLARAMVILA VEETTIL, KURAKKANNI DESOM, VARKALA DESOM AND VILLAGE.**

2. **NARAYANA PILLAI PURUSHOTHAMAN NAIR, KUDIYATHU VEETTIL OF DO. DO.**

BY ADV. SRI.K.K.JOHN (SR)

RESPONDENTS: RESPONDENTS/ DEFENDANTS
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1. **NARAYANI AMMA KOCHAPPI AMMA, VARIL PUTHEN VEEDU, KURAKKANI DESOM FROM SATHYAVILASOM, KURAKKANNI DESOM, VARKALA VILLAGE (DIED)**

2. **SARASAMMA SAVITHRI AMMA OF DO. DO.**

3. **GOPALAKURUP RAMACHANDRAKURUP OF DO. (DIED)**

4. **SAVITHRI AMMA SABIDA OF DO. (MINOR)**

tss

5. KUNJUMON, SON OF SAVITHRI OF DO. (MINOR)

RESPONDENTS 4 & 5 ARE MINORS AND IS REP.BY ITS THEIR MOTHER AND GUARDIAN 2ND RESPONDENT)

THE LEGAL REPRESENTATIVES OF DECEASED 1ST AND 3RD RESPONDENT.

IT IS RECORDED THAT RESPONDENTS 2, 4 AND 5 ARE THE LEGAL REPRESENTATIVES OF DECEASED RESPONDENTS 1 AND 3 AS PER ORDER DT. 6.10.06 IN IA. 1362/06.

BY ADV. SRI.M.DINESH
SRI.BASANT BALAJI

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 15/ 10/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A.NO. 66 OF 1994

Dated 15th October 2007

J U D G M E N T

Plaintiffs in O.S.111/1984 on the file of Munsiff court, Varkala are the appellants. Defendants are the respondents. Plaint B schedule property is part of plaint A schedule property having an extent of about 3 cents including the building therein. Plaint A schedule property admittedly was outstanding in the possession of first appellant as mortgagee. O.S.209/1957 was filed by the mortgagor for redemption and recovery of possession. That suit was decreed and pursuant to the decree possession of the property was taken through court on 19/8/1969. As per S.13A of Kerala Land Reforms Amendment Act 35 of 1969, which came into force on 1/1/1970, a person who would have been a tenant under the Act at the time of dispossession, it was dispossessed on or after 1/4/1964 pursuant to any judgment, decree or order of the court is entitled to apply before the Land Tribunal for restoration of possession of the land.

Appellants filed O.A.932/1970 before Land Tribunal, Quilon contending that they are otherwise entitled to fixity of tenure and were dispossessed in execution of the decree in O.S.209/1957 and therefore they are entitled to get restoration of possession of the land as provided under Section 13A of the Kerala Land Reforms Act impeading mortgagor, the first respondent. Before the Land Tribunal first respondent appeared and contended that she had already assigned the property. Land Tribunal under Ext.A3 order dated 20/8/1971 holding that appellants are entitled to get restoration of possession as provided under Section 13A of the Act allowed the O.A and directed restoration of possession. Under Ext.A1, delivery of possession was taken pursuant to Ext.A3 order. Meanwhile, appellants filed A.A.1832/1976 and A.A.1340/1976 before Appellate Authority, (LR), Attingal challenging Ext.A3 order. Both the appeals were dismissed on 6/2/1985. The appeals were filed with applications to condone the delay. Appellate Authority had condoned the delay. It was challenged before this court by second appellant in O.P.6147/1986. This court allowed the O.P and set aside the order of Land Tribunal condoning the delay and held that appeals are barred by

time though both appeals stood dismissed much earlier under Ext.A3 order. According to appellants after they took delivery of the property under Ext.A1 on 23/6/1972, respondents reduced the property into their possession by force and they have no right to continue in possession. Suit was filed seeking the decree for declaration of title of appellants to plaint B schedule property and for recovery of possession of plaint B schedule property. Contending that subsequent to the trespass respondents constructed a building in the property a decree for demolition of the building was also sought. Respondents in their written statement resisted the suit contending that appellants have no title to the plaint B schedule property. It was contended that there was no delivery of the property from Land Tribunal pursuant to Ext.A3 order and Ext.A3 order is not binding on respondents as respondents 2 to 5 were not made parties to O.A. It was contended that after the property was taken delivery of pursuant to the decree in O.S.209/1957, first respondent assigned the property in favour of mother of second respondent as per Ext.B1 otti sale deed dated 3/11/1969 and when O.A.932/1970 was filed, first respondent had no subsisting right over the

property and on the death of the assignee under Ext.B1 her right devolved on second respondent and she was also not made a party in the O.A and therefore Ext.A3 order is not binding on respondents. It was further contended that Ext.A3 order is vitiated by fraud and appellants are not entitled to claim title to plaint B schedule property and Ext.A1 is only a paper delivery and appellants are not entitled to the decree sought for.

2. Learned Munsiff on the evidence of Pws.1 to 4, DW1, Exts.A1 to A3 and B1 and B2 dismissed the suit holding that appellants have not impleaded second respondent to whom plaint B schedule property vests under Ext.B1 assignment deed, which was executed by first respondent prior to the institution of the O.A and so Ext.A3 order is not binding on second respondent and appellants did not get any title under Ext.A3 and therefore they are not entitled to decree sought for.

3. Appellants challenged decree and judgment before Sub court, Attingal in A.S.8/1986. Learned Sub Judge on re-appreciation of evidence found that appellants can claim title to the property only if they obtained purchase certificate from the Land Tribunal and purchase certificate is the only document of title

and as they did not obtain purchase certificate they have no title to the property. It was also found that Ext.A3 order was obtained by appellants by playing fraud as by that time first respondent has already transferred the property and assignees were not impleaded in the O.A and therefore Ext.A3 order is not binding on respondents. Learned Sub Judge also found that appellants did not obtain possession of the property pursuant to Ext.A1 delivery and they are not entitled to the decree sought for and dismissed the appeal. It is challenged in this appeal. Appeal was admitted formulating the following substantial questions of law.

1) When Ext.B1 assignment deed was executed by first respondent after the publication of Kerala Land Reforms (Amendment) Bill 1968 in the gazette whether courts below were justified in holding that Ext.A3 order is not valid and binding on respondents.

2) Whether courts below were justified in holding that appellants have no title to plaint B schedule property, when Ext.A3 order was passed for restoration of possession by Land Tribunal under Section 13A of Kerala Land Reforms Act and the appeals filed

by respondents were dismissed under Ext.A2 order.

4. Learned counsel appearing for appellants and fifth respondent were heard. Learned counsel appearing for appellants argued that Section 13A of Kerala Land Reforms Act mandates that even a bonafide purchaser for consideration after the date of publication of Kerala Land Reforms (Amendment) Bill 1968 in the gazette, is not entitled to escape from the operation of Section 13A of the Act and even though the assignees of first respondent under Ext.B1 were not impleaded in the O.A, Ext.A3 order is binding on them as they have filed appeal evidenced by Ext.A2 order before the Appellate Authority (Land Reforms) and hence courts below should have found that pursuant to Ext.A3 order, delivery was taken as evidenced by Ext.A1 and appellants have title to the plaint B schedule property and are entitled to the recovery of possession on the strength of title. It was also argued that even though appellants did not obtain purchase certificate from the Land Tribunal their status as cultivating tenants was upheld by the Land Tribunal under Ext.A3 order and therefore findings of courts below that they have no title to the property is unsustainable

and as appellants have title they are entitled to the decree for recovery of possession of plaint B schedule property. It was also argued that courts below should have found that when plaint B schedule property was taken delivery under Ext.A1, no building was in existence and the building was constructed after trespass by respondents subsequent to the delivery and therefore they are liable to remove the same and on their failure, appellants are entitled to get it removed at the expense of respondents and therefore judgments of courts below are to be set aside and a decree is to be granted. Learned counsel appearing for respondents argued that courts below on the evidence found that appellants did not obtain delivery of possession of the property pursuant to Ext.A1 and even though first respondent reported before the Land Tribunal, that she has already alienated property, the assignees were not impleaded and therefore Ext.A3 order is not binding on respondents and courts below rightly found that appellants are not entitled to the decree sought for.

5. There are certain undisputed facts. O.S.209/1957 was filed by first respondent seeking a decree for redemption and recovery of possession.

Pursuant to the decree granted in favour of first respondent delivery of property was taken, in execution of decree, on 19/8/1968. O.A.932/1970 was filed later by appellants which was allowed under Ext.A3 order dated 20/8/1971. Before filing of O.A.932/1970, under Ext.B1 sale deed dated 3/11/1969 first respondent assigned the property in favour of mother of second respondent and on her death her right now vests with second respondent. O.A. Was allowed under Ext.A3 order. Appellants sought delivery of the property pursuant to Ext.A3 order. Appellants obstructed the same. They filed applications before Munsiff, Land Tribunal, Alappuzha in E.P.37/1975. which was filed by appellants seeking delivery of the property under Ext.A3 order. As per Ext.B2 order dated 20/4/1976, Land Tribunal dismissed the applications rejecting the case of appellants that Ext.A3 order is not binding on them or that they are entitled to get re-delivery of the property which was taken possession of by appellants on 23/6/1972 in E.P.37/1975. Challenging Ext.A3 order appellants filed A.A.1532/1976 and A.A.1340/1976. Both appeals were dismissed on 6/4/1985. In the light of Ext.A2 order, appellants cannot be heard to contend that Ext.A3 order is not binding on them.

Under Section 102 of Kerala Land Reforms Act, any person aggrieved by an order of the Land Tribunal including an order passed under Section 13A of Kerala Land Reforms Act is entitled to file an appeal. It is exercising that power appellants filed the respective appeals before Appellate Authority(LR), Attingal. The appeals were dismissed under Ext.A2 order. Therefore, respondents cannot be heard to contend that Ext.A3 order is not binding on them.

6. Section 13A was inserted to Kerala Land Reforms Act by Land Reforms Amendment Act, 35 of 1969. Said Act was published in the gazette dated 17/12/1969. Kerala Land Reforms (Amendment) Bill 1968 was published in the Kerala gazette on 16/8/1968 and report of the select committee was published in the gazette on 7/8/1969. Section 13A provides for restoration of possession of persons dispossessed on or after first April, 1964. Section 13A reads,

> "13A. Restoration of possession of persons dispossessed on or after 1st April, 1964:- (1) Notwithstanding anything to the contrary contained in any alw, or in any contract, custom or usage, or in any judgment, decree or order of

court, where any person has been dispossessed of the land in his occupation on or after the 1st day of April, 1964, such person shall, if he would have been a tenant under this Act as amended by the Kerala Land Reforms (Amendment) Act, 1969, at the time of such dispossession, be entitled subject to the provisions of this section to restoration of possession of the land:

Provided that nothing in this sub-section shall:

(a) apply in any case where the said land has been sold to a bonafide purchaser for consideration before the date of publication of the Kerala Land Reforms (Amendment) Bill, 1968, in the Gazette; or

(b) entitle any person to restoration of possession of any land which has been resumed under the provisions of this Act.

(2) Any person entitled to restoration of possession under sub-section (1) may, within a period of six months from the commencement of the Kerala Land Reforms (Amendment Act), 1969, apply to Land

> Tribunal for the restoration of possession of the land.
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> (3) The Land Tribunal may, after such inquiry as it deems fit; pass an order allowing the application for restoration and directing the applicant to deposit the compensation, if any, received by the applicant under any decree or order of court towards value of improvements or otherwise and the value of improvements, if any, effected on the land after dispossession as may be determined by the Land Tribunal, within such period as may be specified in the order.
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> (4) On deposit of the compensation and value of improvements as required in the order under sub-section (3), the Land Tribunal shall restore the applicant to possession of the Land, if need be by removing any person who refuses to vacate the same."

Section 13A therefore provides a remedy to a person who has been dispossessed of the land in his occupation on or after 1/4/1964, notwithstanding anything to the contrary contained in any law or contract, custom or usage or any judgment, decree or order of the court if at the time of such dispossession he would have been a

tenant as provided under the Act. Sub section 2 of Section 13A enables that person to apply to the Land Tribunal within a period of six months from the commencement of Kerala Land Reforms Act, 35 of 1969, i.e, 1/1/1970, to apply to Land Tribunal for restoration of possession of the land. Sub section 3 provides that Land Tribunal may pass an order allowing application for restoration and directing applicant to deposit the compensation, if any, received by him under the decree or order of the court towards value of improvements or otherwise and the value of improvements if any effected on the land after dispossession, after such enquiry as it deems fit. Sub section 4 provides that on deposit of compensation and value of improvements as required under sub section 3, Land Tribunal shall restore the applicant to possession of the land, if need be by removing any person who refuses to vacate the same. Proviso to sub section 1 mandates that sub section 1 shall not apply in any case where said land has been sold to a bonafide purchaser for consideration before the date of publication of Kerala Land Reforms Bill 1968 in the gazette. As stated earlier Bill was published in the gazette on 16/8/1968. Therefore, proviso to sub

section 1 of Section 13A would apply to the case of a bonafide purchaser, if the sale was before 16/8/1968. Ext.B1 sale deed was executed by first appellant only on 3/11/1969. She even obtained possession as per court delivery only on 19/8/1969 much after the publication of the Bill in the gazette on 16/8/1968. In such circumstance, even if mother of second respondent is a bonafide purchaser the proviso will not protect her from avoiding an order of restoration of possession as provided under Section 13A of the Act. Therefore, even if mother of second respondent is a bonafide purchaser for consideration, she is not legally entitled to resist the claim for restoration of possession as provided under Section 13A.

7. As is seen from Ext.A3 order though first respondent appeared before the Land Tribunal in O.A.932/1970 and submitted that she has sold the property she did not disclose to whom she sold the property. In such circumstance, appellants cannot be find fault for not impleading second respondent or her mother in the said O.A. More over, when proviso to sub section 1 of Section 13A only exempts bonafide purchaser for value and that too if the transfer was before 16/8/1968

appellants are entitled to ignore the transfer as it would be a void transfer. Therefore on the ground that second respondent or her mother were not parties to the O.A, it cannot be said that Ext.A3 order is not binding on her. More over when second respondent herself challenged Ext.A3 order before Appellate Authority, exercising her right provided under Section 102 of the Act, it is not open to respondents to contend that Ext.A3 order is not binding on them. Finding of courts below that Ext.A3 order is not binding on respondents is not correct. So also, finding of first appellate court that Ext.A3 order was obtained by fraud and therefore it is a nullity is also sustainable. When first respondent the necessary party before the Land Tribunal, did not disclose to whom she sold the property and sale by first respondent was in fact after the publication of the Bill in the gazette, it cannot be said that Ext.A3 order was obtained by fraud. Finding of the first appellate court is therefore unsustainable.

8. True, appellants did not purchase jenm right from the Land Tribunal and did not obtain the purchase certificate as provided under the Act. But that does not mean that appellants have no title to the property. When

appellants have a right of fixity of tenure, which was upheld by the Land Tribunal under Ext.A3 order, it cannot be said that they have no title to the property. Even though they did not purchase jenm right from Land Tribunal which vests with the Government from 1/1/1970, it cannot be said that appellants who are cultivating tenants have no title to the property. Evidence establish that pursuant to Ext.A3 order appellants have taken delivery of the property evidenced by Ext.A1 delivery receipt and proved by evidence of PW4 Revenue Inspector and PW2 who was beating drum at the time of delivery. More over Ext.B2 order shows that delivery was taken and re-delivery was sought for before the Land Tribunal by respondents. In such circumstances, evidence of PW1 that respondents trespassed into the plaint B schedule property subsequent to the delivery effected under Ext.A1 should have been accepted by the courts below. As respondents have no right to continue in possession of the property, appellants are entitled to a decree for recovery of possession of plaint B schedule property and respondents are bound to remove the building in the plaint B schedule property constructed subsequent to the delivery.

9. Appeal is allowed. Decree and judgment passed by courts below are set aside. A decree granted in O.S.111/1984 is granted as follows.

Appellants/plaintiffs are entitled to recover possession of plaint B schedule property on the strength of title from respondents. Respondents are directed to demolish and remove the building in the plaint B schedule property within two months from this day, failing which appellants are entitled to get it demolished at the expense of respondents. Appellants are also entitled to the costs.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.66 OF 1994

15th October 2007

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